SHORT LINE RAILWAYS

Current Issue Paper 164

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INTRODUCTION

The two major Canadian railways, Canadian National and Canadian Pacific, have been abandoning lines in many parts of Canada and Ontario. Within Ontario, railway trackage has declined from 9,193 miles in 1970 to 7,253 miles in 1993.[1] When lines are closed, jobs are lost, industries along the line which shipped their goods by rail may be adversely affected, and the transportation options and access of communities and individuals in the area are reduced. All of these effects have been more severe in rural and northern areas where most closures have occurred.

An alternative to closing may be establishing short line railway companies. Short line railways are generally seen as smaller independent railway operations which operate freight services, or in some specialized cases seasonal tourist excursion trains, along separate lines which connect to the mainline railways. Short lines "also known as feeder railways, can vary in length from a couple of kilometres of track to 100 kilometres or more. Almost all use tracks that the major railways could not operate profitably, and either sold or abandoned."[2]

This paper will review the current operations, future prospects, and economic, legal, and labour issues associated with setting up short line railways in Ontario. Recent legislative initiatives of the Ontario government respecting short lines are also reviewed.

CANADA'S RAILWAY INDUSTRY

The immediate context for the potential development of short line railways is the economic health and prognosis of the industry as a whole. To increase its efficiency and profitability, the national railway industry has been reducing track mileage and its labour force.

- Statistics Canada figures indicate that between 1984 and 1993 railway employment in Canada for CN, CP and Via Rail declined from 81,710 to 48,855 workers.[3] During 1993, CN further reduced its workforce by 5.4 percent, CP by 5.8 percent, and Via Rail by 3.1 percent. Between 1983 and 1993 average annual employment in the railway industry in Ontario declined from 21,000 to 15,700.[4]

- Between 1988 and 1993 the length of track operated in Canada declined from 91,364 to 84,648 kilometres, mainly due to a reduction in the length of branch lines.[5]

    - As of the end of 1993, Ontario's 13,529 kilometres of mainline trackage, accounted for almost 36 percent of the national total of

37,856 kilometres. CN operated 6,606 kilometres, CP operated 4,470 kilometres and other railways, mainly the Algoma Central and Ontario Northland, operated 2,453 kilometres of mainline track within Ontario.[6] Most of this trackage was located in northern Ontario as part of the transcontinental mainlines of Canadian National and Canadian Pacific.[7]

Over the long-term it has been estimated that within Canada "at least half of the existing rail network will be abandoned, operated by short line operators, or devoted to passenger services between major urban areas."[8]

Canadian National

Both Canadian National and Canadian Pacific have been cutting back their operations. Both see short line railways as an important part of their overall corporate rationalization and as a way of preserving viable local rail services.

The report of the President, Paul Tellier, speaks of the need to revitalize CN's eastern Canadian operations and states:

> In some of the more difficult areas of the East [east of Winnipeg], we are dealing with the problem of network overcapacity by working out a new system comprising either independently owned or internally managed short lines [i.e., arrangements negotiated with groups of employees who would operate the lines as though they were short lines]. The new system will serve as our feeder network and maintain rail service to our customers.[9]

It has been estimated that up to 25 percent of CN's rail network could be suitable for short line operation and most of this low-density trackage is east of Thunder Bay.[10] A public affairs document entitled *Short Line Railways*, prepared by CN, indicates:

> CN does not want to lose customers or cut service. It wants to move goods in ways that will allow it to maintain service and survive. A shortline/CN partnership means local shippers retain direct access to an international transportation network via the locally-based shortline operator. And that access is enhanced by the relationship between the locally-based shipper and the local carrier.[11]

CN's *Annual Report 94* noted that "abandonment is a last-resort solution that we would apply only when no hope exists for short line operation."[12]

THE POTENTIAL OF SHORT LINE RAILWAYS

Most fundamentally, short line railways can be an alternative to abandoning lines, with all the implications closure has for affected communities. Closing a line can effectively mean the permanent loss of rail links for the particular area; if the original track/ties are lifted, it is highly unlikely that rail service would ever be restored.

They may "allow shippers to remain in smaller communities, rather than relocating, which preserves local jobs."[13] Industries and agricultural and resource producers in rural areas would retain rail freight services and their sales would continue to be fed into junction points with the mainline railways.

The federal National Transportation Act Review Commission (1993) argued with respect to short lines that:

> It is not a magic solution to railway ills, but it does offer an attractive alternative to abandonment. Short lines can provide an option for shippers and municipalities facing outright loss of rail service. The emergence of new railway operators, however small, may lead to innovations in both the operation and marketing of rail services. At best, a successful short line can restore competitiveness in markets where high cost operators have been unsuccessful.[14]

Because of their generally lower operating costs and more personalized style of service, short line operators have been able to increase railway freight business in some situations.[15] For example, the Goderich-Exeter Railway (GEXR) in southwestern Ontario, which in 1992 purchased 112 kilometres of former CN track between Stratford and Goderich, has been able to substantially increase the number of freightcars handled. [16]

It is also in the mainline railways' interests to sustain short lines. Freight that used to be carried on the abandoned line would be shifted to trucks and would not likely be subsequently transferred to the rail mode. Overall railcar loadings across the national or continental rail network would be reduced. An official of Canadian National indicated that they would prefer to sell branch lines rather than abandon them because they would then serve as feeders to the mainline railway.[17]

Preserving short lines can alleviate expansion and maintenance pressures upon local municipal roads and provincial highways by keeping traffic on the rails that would otherwise travel by truck along provincial highways. Fewer trucks on local roads can also be viewed as enhancing roadway safety and benefitting the environment.

> As a mode of surface transportation, the railroad has it all over the truck in terms of environmental friendliness. In terms of emissions, fuel efficiency, safety, and land-use, the railway does it best, for people and their environment.
>
> Consider emissions. If railroads are used as a baseline of 1, studies have shown trucks coming in at 13.6 on diesel particulates, 12.5 on hydrocarbons, 3.7 on nitrogen oxides, and 3.6 on carbon monoxide. It's much the same story when fuel efficiency is considered, with railroads producing about 2.5 times the ton-miles of trucks per gallon of fuel.[18]

PROBLEMS WITH CONVERSION TO SHORT LINE RAILWAYS

ECONOMIC VIABILITY

For a short line to continue operating, there must be sufficient existing or potential freight traffic, and the short line must also have a lower cost structure than the larger mainline railroad.

Such considerations are taken into account by Canadian Pacific when reviewing potential sales to short line operators. They examine a number of criteria:

> ... one of which looks to see if there is a sufficient traffic base for a short-line to operate. Other criteria for evaluating a potential purchaser includes expertise to operate a railway safely, a credible business plan and the financial backing necessary to not only conclude a sale ... but the financial support needed to maintain and operate over the long-term.[19]

Potential rail traffic volumes may limit further investments. Government officials believe that traffic volumes on many of the remaining potential Ontario short lines may be light.[20]

LABOUR RELATIONS

Key questions for potential operators of short line railways are labour costs and collective agreements. In a *Globe and Mail* article of November 1992, an official of the Canadian Railway Labour Association is quoted as stating that the purpose of short lines is to eliminate unions and short-circuit labour agreements.[21] Similarly, in a June 1995 *Globe* article, a union spokesperson for the CN workers indicated that the "US experience

[with short lines] has shown these are often undercapitalized, pay workers a lot less and have a high failure rate."[22]

RailTex promotional material states:

> The majority of RailTex short lines employ a total operating staff of fewer than twenty persons. This reduced employee population is less likely to attract rail labour organizing activities. In addition, incentive compensation packages can be better keyed to individual performance in a small organization.[23]

A particular concern for the industry has been the issue of union successor rights, whether the new operator will be bound by the existing collective agreement. This question was complicated by the fact that most sales to establish short line railways crossed jurisdictions. Successor rights were contested in a lengthy legal challenge by the United Transportation Union prior to the commencement of the Central Western Railway Company as a short line operator in Alberta in 1986. This railway is described as "the first short line of the modern generation in Canada."[24] The operator appealed to the Supreme Court of Canada which rendered a decision in December 1990.[25]

> The crucial effect of the case was to put under provincial jurisdiction short lines located entirely within a province whose operation is not "integral to the operation of a federal work or undertaking." As a consequence, these types of short lines are not obligated to continue labour contracts negotiated by the Class I railways [CN and CP] under federal jurisdiction.[26]

The "Successor Right" Provisions of Bill 40 - Labour Relations and Employment Statute Law Amendment Act, 1992 and Short Line Railway Purchasers

In 1992, Bill 40 added Section 64.1 to the *Labour Relations Act*. It established collective bargaining "successor rights" in the event of a sale of a business from federal to provincial jurisdiction, and gave the Ontario Labour Relations Board authority to "make such additional orders as it considers appropriate in the circumstances." These provisions would normally apply in cases where rail lines owned by one of the federally regulated Canadian transcontinental railways were sold to a short line operator in Ontario.[27] There is no indication, however, that a short line railway purchase in Ontario has gone before the Labour Relations Board since Bill 40 became law, and there is also no caselaw on this matter.[28]

Industry representatives opposed this provision. In its 1992 submission to the Standing Committee on Resources Development on Bill 40, the Railway Association of Canada stated:

> Shortline sales will stop … if the shortline operator is hampered by a successor rights clause as is proposed by the draft legislation.[29]

A 1994 report prepared for Transport Canada also noted:

> …, the result of the action taken by the Ontario Government has been that the establishment of short-line railways in Ontario has ground to a halt. Therefore, unless the Ontario law is changed, we will probably witness more rail abandonments in that Province.
>
> Furthermore, if other Provinces follow the Ontario example, we can expect the short-line railway concept to come to an abrupt halt in Canada.[30]

This report concludes that:

> until legislation affecting short-line operations is more favourable or the unions overcome their inertia, the prospects of short-line railways in Canada are rather bleak.[31]

On a similar note CP has indicated:

> …, the establishment of short-lines in Ontario is proving to be most difficult, due largely to the issue of labour successor rights under Bill C-40 [*sic*].[32]

It has also been reported that concerns over successor rights have affected particular cases. In April 1993, RailTex, the owner of the Goderich-Exeter Railway, "suspended plans to acquire five CN lines in the province because of the successor rights issue."[33] Similarly, Canadian Agra decided to scrap a plan in the Kincardine area of Bruce County to rebuild CN's abandoned Douglas Point-Harriston line and purchase the existing Harriston-Stratford CN tracks.[34] In this case it was reported that "following 18 months of fruitless negotiations with the province and the unions for a waiver [from the successor rights provisions] ... Agra officially threw in the towel on Aug. 30 [1994]."[35]

In the spring of 1994 Jim Wilson, MPP (Simcoe West), introduced a Private Member's Bill, Bill 142*, Labour Relations Amendment Act, 1994*

(First Reading March 22, 1994) which "would exempt from successor rights any sale of a business involving the sale of a section of railway track by a predecessor employer who operates a railway." This proposal was related to the possible abandonment of the CN line from Barrie to Collingwood. Similarly, a review article on short line railways in *Municipal World* called for excluding railways that employ 25 persons or less from provincial labour legislation.[36]

More broadly, it has been speculated in the press that the repeal of Bill 40 by the new government "may unshackle short line railway sales" by Canadian National and Canadian Pacific.[37] An official of Canadian National has agreed that the "climate may become more attractive to potential shortline investors."[38]

The Conservative government has moved to repeal Bill 40. Bill 7, *Labour Relations Amendment Act, 1995* which received first reading on October 4, 1995, repeals the previous provisions regarding successor rights in the event of a corporate sale from federal to provincial jurisdiction, including a short line railway.

Ongoing Labour Relations

With the elimination of statutory successor rights, new short line operators may still negotiate with employees of the former railway. Issues of employment levels, pay, seniority, severance and other facets of work relations have often been addressed (as detailed in case studies outlined later). Within Ontario, the Algoma Central agreement was cited by labour officials as an example of successful negotiation.[39] Nine collective agreements were collapsed into one, the union effectively waived its successor rights, and a new operating agreement was concluded through the collective bargaining process.[40] A union official has been quoted as stating "it's better than having (the railway) close up completely."[41]

Another example given by a union official is the Okanagan Railway in British Columbia. The railway union and CN management operate it as an "internal shortline" to serve the Okanagan Valley fruit industry.[42] This arrangement has worked well and business is increasing.

REGULATORY PROCESS

Ontario

An issue facing prospective short line railway purchasers and operators in Ontario is the length, complexity, and cost of the provincial approval process, particularly for small commercial operators. In order to be incorporated as a provincial railway company, prospective short line

operators require private legislation to be brought before the Legislature. In addition, under the provisions of the Ontario *Railways Act*,[43] the approval of the Ontario Municipal Board (OMB) is required prior to the commencement of operation. The Goderich-Exeter Railway (GEXR) was the first modern application handled by provincial officials and it served as a "test case"; current applications would probably take less time. A new process has been put forward, as outlined below, under the proposed short line legislation of 1995.[44]

The Ontario Ministry of Transportation recognizes that the Ontario *Railways Act* has fallen into disuse and is out-of-date.[45] It was originally designed to regulate radial and street railways which provided interurban services until the early decades of this century. These operations were eclipsed by the development of the provincial highway system and the growth in private automobile ownership.

The OMB primarily reviews applications from a safety perspective. For freight operations the OMB has concluded a contract with Transport Canada to carry out engineering, operations and equipment inspections which are paid for by the applicant.[46] Federal railway regulations are incorporated into OMB orders for freight and passenger railways because there are no provincial regulations in this regard.

The GEXR expressed concern with the approval processes involving the National Transportation Agency and the Ontario Municipal Board, which apparently took 19 months.[47] During this time shippers became "nervous" with respect to the continuance of rail service and the company was required to absorb "hefty legal fees."[48]

Current indications from the OMB are that a short line application would now be processed more quickly than the GEXR case.[49] The following is from the 1992 OMB decision on the GEXR application:

> The federal government's decision to reduce the scope of the national railways has led to the sale of shortlines to Ontario-incorporated rail companies. This recent series of events has left the province somewhat ill-prepared to establish an administrative structure for a railway operation independently of the federal government.[50]

The OMB has also developed a "check-list" of the documents required for a short line application and the application is not processed until these materials are received from the applicant.[51]

Three short line railways have been approved by the OMB and are operating: Port Stanley Terminal Railway, Goderich-Exeter Railway, and

South Simcoe Railway . Approval for the Arnprior-Nepean Railway is pending, and several other applications have been submitted to the Board, including the Ontario Southland Railway (freight service from Port Stanley to St. Thomas), South Simcoe Railway Heritage Corporation (an extended passenger operation), and Waterloo St. Jacobs Railway (a freight operation from Kitchener to Elmira and passenger operation from Waterloo to St. Jacobs).[52] Six other interests have secured special legislation but have not submitted applications to the OMB to operate.[53] In a later section the legislative proposals of the current Conservative government, which would change the above procedures, are highlighted.

Federal

In 1992, the National Transportation Act Review Commission was appointed to advise the federal Ministry of Transportation. In its 1993 report, the Commission recommended a streamlined federal review process: a 30 day rather than six month notice period for the federal railway line conveyance process and approval of the National Transportation Agency.[54] The federal government has recently tabled proposed legislative changes that would establish a 105-day review process for the sale or abandonment of a branchline. (See the later section under Government initiatives for elaboration.)[55]

CASE STUDIES

ALGOMA CENTRAL

The financially troubled Algoma Central Railway was purchased by the American-owned Wisconsin Central Transportation Corporation, which owns the international railway bridge at Sault Ste. Marie between Ontario and Michigan, and connecting railway lines into Michigan and Wisconsin with a link to Chicago.[56] The $33.7 million sale was assisted by an $11.6 million combined loan and grant from the Northern Ontario Heritage Fund Corporation, an agency of the Ministry of Northern Development and Mines.[57]

The Algoma Central Railway (ACR) is a federally regulated regional railway that runs from Sault Ste. Marie, Ontario to its northern terminus at Hearst. It has a branch line to Michipicoten and connects with the CN and CP transcontinental mainlines. It is estimated that the Algoma Central accounts for 1,500-2,000 direct and indirect jobs and has an important impact upon the regional economy, resource companies and tourism.

In recent years it has experienced financial difficulty; since 1987 ACR has received some $40 million in non repayable provincial operating grants

through the Ontario Ministry of Northern Development and Mines.[58] It has also received federal subsidies for the operation of remote rail services. The Ontario government announced that its subsidies would cease at the end of 1993.

Wisconsin Central was the only interested party in the ACR. Consideration was also given to Ontario Northland assuming operation of the Algoma Central, but this would have involved ongoing major government subsidies.[59]

Wisconsin Central acquired the physical plant of the Algoma Central. The affected employees have negotiated a severance and early retirement package. The new company employs over 200 of the former Algoma Central workers and those workers not hired also have the first right of recall for future employment with the new owners.[60] In the interest of job preservation, the affected unions waived the "successor rights " of their previous collective agreements and concluded a new more flexible collective agreement with the new owners.[61]

This sale is cited by union and Ministry of Labour officials as an example of successful negotiation. An official of the Brotherhood of Locomotive Engineers described this agreement as a "model for shortlining."[62] An agreement was ratified by the unions in late 1993 to become effective in December 1994, and this transaction also received National Transportation Agency, Investment Canada and Competition Bureau approval.[63] The railway will remain under federal labour authority and legislation.

Algoma Central has emerged as a restructured regional railroad, linked to the Wisconsin Central's rail network in Michigan and Wisconsin. This purchase also benefits other Canadian railways since a significant amount of rail traffic, up to 1,500 rail cars per year carrying steel produced by Algoma Steel, is transferred to the CN mainline at Oba in northern Ontario. Lumber is also transported from Hearst on the Algoma Central southward to American markets.[64] It would appear that the Algoma Central operation benefitted during the national rail strike and lockout in March 1995, and that traffic and revenues have increased on this line under the new ownership.[65]

Goderich-Exeter

The Goderich-Exeter Railway (GEXR) was formed by the purchase of two former CN branchlines in southwestern Ontario for $4 million. It began operating on April 3, 1992 along 70 miles of track between Goderich and Stratford Junction and Clinton Junction and Centralia, and connects to the main CN system at Stratford.[66] It is owned by San Antonio-based RailTex Service Company which owns 25 short line railroads across North

America (22 in the United States, two in Canada – one each in Ontario and Nova Scotia, and one in Mexico).

The GEXR employs 12 staff, versus 15 under CN. The Brotherhood of Locomotive Engineers began representing some of these workers in November 1994.[67] The company employs both former railway workers and people from the community. Overall income for employees with the short line is lower than for comparable positions with CN, but the GEXR offers a profit-sharing program.[68] The company transports over 8,000 cars per year and current traffic is now some 30 percent greater than initial loadings.[69] It has also captured some agricultural and mineral shipments from local industries that were formerly shipped by truck.[70]

GEXR feels the keys to its success are:[71]

- No successor rights. The Chairman and President of RailTex, Bruce Flohr said in 1993, "revisions to Ontario's labour legislation regarding union successor rights have prompted RailTex to suspend a study into acquiring five more lines in Ontario."[72] Flohr also said his company would not have purchased the GEXR if this law had been in effect in 1991[73] and that "there is no way the [short line] railway could operate profitably under CN labour agreements."[74]

  Nonetheless, Railtex is actively seeking to buy other short lines where economic conditions are favourable.[75] An official indicated in June 1995 that the company "has continued to talk with CN as well as CP Rail System about potential short lines in Ontario, and we are anxious to see [provincial] legislative changes soon."[76]

- The short line should fit into the RailTex philosophy of commodity and geographic diversification, so that adverse economic conditions or trends in one area, or with respect to a particular commodity, do not affect other operations.[77] A major commodity carried on the GEXR is salt "but we [RailTex] don't haul salt on any of our other railroads."[78]

- The short line to be acquired should be a going concern and should be able to make a profit.

Arnprior-Nepean

In August 1992, negotiations between Canadian National, BASF Chemicals, and the Regional Municipality of Ottawa-Carleton (RMOC) were concluded to preserve freight service on 25.67 miles of CN line from Nepean to Renfrew that was under consideration for abandonment. The right-of-way was purchased by the RMOC for approximately $0.5 million in accordance with its Regional Official Plan to protect railway rights-of-

way for future public use.[79] The railway is seeking provincial incorporation and Ontario Municipal Board approval as the Arnprior-Nepean Railway Company. The line is leased to BASF from the Region and BASF, at present the only user, is responsible for maintenance.[80]

RMOC has also purchased the Carleton Place subdivision rail line from Canadian Pacific. The tracks have been lifted from this line and it is being used on an interim basis as a recreational corridor.

Other Operations

- The Canadian National's Murray Bay Line in Quebec was sold to a short line operator to continue operation as the Chemin de Fer de Charlevoix.

- CN's American subsidiary, the Central Vermont Railway, was sold to the American short line operator RailTex.

- CN recently began operation of an "internal short line" along 1,855 kilometres of lightly used lines in northern Quebec[81] in May 1995 for a five year period. The lines are still owned by the company but operate as separate entities. A reduced workforce is employed under different working rules. Agreement has apparently been reached with all affected unions except for the Canadian Auto Workers, who represent car inspectors.[82] Union seniority, benefits and earnings are protected. The new operation only requires 223 of 329 original workers and the remaining workers have been offered severance, early retirement or employment by CN elsewhere in Quebec. CN is able to keep these lines in operation at a 35 percent lower cost than before. This operation will use CN locomotives and freight cars and CN will continue to provide billing and other administrative services.[83] This internal short line will be treated "as a semi-autonomous profit centre, using CN infrastructure and equipment."[84]

- In August 1994, the sale of Canadian Pacific's 57-mile Dominion Atlantic Railway in Nova Scotia to a short line operator was approved.

- In January 1995, 415 miles of CP rail assets east of Lennoxville, Quebec and heading through Maine to Saint John, New Brunswick, were sold to two short line operators.[85] These sales preserve rail freight service to the port of Saint John.

OTHER JURISDICTIONS

This section briefly surveys other provinces that have recently updated their railway statutes. The state of Wisconsin has also developed an interesting railway plan and assistance program.

QUEBEC

Quebec's *Railway Act, 1993* sets up a procedure for the incorporation of railways operating in this province and removes the need for the National Assembly to deal with private railway bills. The "Commission des Transports du Quebec" is given the authority to issue a certificate of competence to prospective railway operators. Corporate information and insurance requirements are set by regulation.[86] This basic approach appears similar to the proposal under Ontario's *Short-line Railways Act, 1995*.

In addition, *An Act to Ensure Safety in Guided Land Transport*, which came into force in 1988, is used to regulate safety matters for railways, tramways, monorails, and transport at industrial plants under provincial jurisdiction. This legislation replaced the old Quebec railway legislation which was originally adopted in the last century. It is mainly applied to railways chartered to operate in Quebec and companies which operate railway equipment. Transport Quebec carries out railway safety inspections and uses the same basic rules as Transport Canada. Amendments to this statute are pending to allow the Minister greater flexibility in the consideration of standards.[87]

At present there are seven provincially regulated short line railways in Quebec and two of these operations are tourist trains. The newest freight-hauling short line commenced operation between Quebec City and Claremont in December 1994. Quebec's legislation does not specifically address the issue of "successor rights" and the Transport Ministry is opposed to such a provision.

NEW BRUNSWICK[88]

In the spring of 1994, the New Brunswick *Shortline Railways Act* was passed with regulations adopting Transport Canada safety standards. This statute applies to railways operating within the province and is designed to accommodate short line operations. It updates the provisions of the *New Brunswick Railway Act* of 1927.

- In early January 1995, rail service on the former Canadian Pacific mainline from Sherbrooke, Quebec through Maine to the port of Saint John was preserved through the establishment of three short line

railways.[89] In December 1994, however, Via Rail suspended passenger service on this line from Montreal to Saint John.[90]

- The New Brunswick Southern Railway company, which is owned by the Irvings, runs from McAdam on the Maine-New Brunswick border to the port of Saint John.

- Other short lines operate in Maine, or between Maine and Quebec along this route.

The New Brunswick legislation is silent on "successor rights." Indications are that the new short line railways have hired up to one-third of the former CP employees and that other employees have been transferred, or offered financial incentives or early retirement packages.[91]

Nova Scotia

The 1993 *Railways Act*, which regulates railways within the province, has not yet been proclaimed. Some additional amendments are contemplated during the fall 1995 session of the Legislature, and the regulations are awaiting drafting.[92]

In recent years, several short line railways have been established in this province under contracts between the provincial Minister of Transportation and various companies. Contracts have specified inspection, safety, maintenance and insurance requirements.

- In October 1993, the Cape Breton and Central Nova Scotia Railway, owned by American-based RailTex, began operation on the former Truro to Sydney CN line. This railway is performing better than forecast and carries a diversified cargo. It serves the steel mills in Sydney, paper mills, coal shipments and a Michelin plant. Indications are that this line "has been able to operate with half of the labour costs that CN incurred. Where 110 people were needed to operate this line … 45 are managing to give better service as a short line operator."[93]

- Another short line operation was established in September 1994 on a former CP line from New Minas to Windsor Junction (Windsor and Hantsport Railway). This operation extends over 93 kilometres of track and serves a gypsum mine and other industrial customers. There was an incentive program for this short line operator to offer employment to former CP Rail employees.[94]

The Nova Scotia legislation is silent on the matter of "successor rights". One of the unions associated with the Cape Breton and Central Railway filed with the Canada Labour Relations Board, which found that the new

railway is a provincial undertaking and union successor rights do not apply. A subsequent legal appeal was unsuccessful.[95]

WISCONSIN[96]

This state's railway policy has generally developed in reaction to railway abandonments as an effort "to pick up the pieces."[97] Wisconsin lies along the western shore of Lake Michigan and is removed from the major east-west rail corridors heading out of Chicago. Public policy is to preserve short lines (where the cost-benefit structure is supportive) as an important component of economic development for businesses and smaller communities.[98]

In the late 1970s, Rail Transit Commissions were formed as multi-county agencies with joint powers since individual rail lines often cross county lines. The state assumed ownership of some rail corridors; the commissions owned the structures and improvements; and contracts were let with short line operators for rail service. The Commissions were eligible for grants from the state Department of Transportation, but funding was not available for operating subsidies. Some corridors were abandoned and converted to other uses (e.g., "rails to trails"), and some short line operators went bankrupt. However, some 800 miles of short line trackage was preserved for rail service within Wisconsin.

This state has also developed a program, with funding of $5 million dollars per year up to at least fiscal 96-97, to provide interest free loans to private rail carriers. The Wisconsin Central Transportation Corporation, which was described as an aggressive and successful operator, has received state loans. This company is also the owner-operator of the Algoma Central Railway in Sault Ste. Marie, Ontario.

It was indicated that rail transportation policies in Wisconsin do not deal specifically with "successor rights" which are under federal authority. This state's railway policies appear to be more proactive than Ontario's where railways have traditionally been considered the primary responsibility of the federal government.

GOVERNMENT INITIATIVES

FEDERAL

In recognition of the potential of short line railways, the federal government on June 20, 1995 tabled the *Canada Transportation Act*. The legislation is designed to "modernize and streamline [federal] rail regulation, [and] promote the formation of short-line railways" rather than

focussing on the abandonment of under used rail lines.[99] When passed, these provisions would require railway companies to prepare a public three-year plan identifying lines they wish to retain, sell or discontinue. Within 105 days, affected rail lines would have to be offered for purchase by public or private purchasers.[100] If no purchaser came forward, including all levels of government, the railway would discontinue service. Transport Canada has estimated that two-thirds of the rail lines that are likely candidates for abandonment could support viable short line operations.[101]

In commenting on this legislation Doug Young, the federal Transport Minister, stated:

> [with] the combination of this [federal] regulatory reform and what I understand to be the policy of the new (Conservative) government in Ontario to encourage short-line development, I think you will see a significant take-up [of rail lines].[102]

In addition, a recent federal arbitration award, in the aftermath of the March 1994 national rail strike and lockouts, reduced job security provisions for some unionized workers and the potential future costs of job security provisions to the major railway companies. This will likely assist in the future privatization of Canadian National because of a reduction in operating costs[103] and potential investors and short line operators may benefit.[104]

Provincial

In response to possible branch line abandonments by Canadian National in Simcoe County, a Task Force was established by the former New Democratic government in the spring of 1994, with the Ministry of Economic Development and Trade as the lead ministry. One of the matters under consideration during these consultations was, according to the former Minister of Economic Development and Trade, "the possibility of amalgamation of a number of separate collective agreements and unions into one."[105]

A July 1994 study commissioned by the Ontario Ministry of Northern Development and Mines assessed the impact on northern communities of a possible consolidation, or partial abandonment, of the CN and/or CP transcontinental rail lines across Northern Ontario.

It commented:

> The prospects for the development of short lines in Northern Ontario will be limited by the location of and opportunities for commercial operations and by the attractiveness of such operations to candidate owners.[106]

It also mentioned a possible connection of these lines, or segments thereof, to other northern railways such as the Algoma Central/Wisconsin Central railway network.

A 1995 study which examined rural rail rationalization in southwestern Ontario for the Ministries of Transportation and Agriculture and Food proposed a "strategically planned regional rationalization" or systematic approach to rationalization of the recognized excess of rail lines in southwestern Ontario.[107] Within the study area (from Hamilton in the east, Goderich in the north, Sarnia and Windsor in the west, and the Lake Erie shoreline in the south), there are approximately 1,835 kilometres of track owned by seven railway companies. The study notes that "this railway plant is concentrated within a region that is only 300 kilometres long by 100 to 150 kilometres in width."[108]

Current Ontario Government Short Line and Labour Law Legislative Proposals

In early October 1995, the Conservative government introduced legislative proposals to streamline the short line approval and review process and remove the application of successor rights to short line sales/purchases.

Bill 5, *Short-line Railway Act, 1995* received first reading in the Legislature on October 3, 1995, and "provides for the licensing and regulation of railways transferred from federal government jurisdiction to provincial government jurisdiction."[109] The Compendium to this Bill states: "The existing Ontario Railways Act does not accommodate such transfers in a manner acceptable to investors." Key features of this legislation are:

- Potential short line operators would now be able to incorporate under either the *Business Corporation's Act* or the *Corporations Act.*
- A "registrar of shortline railways" within the Ministry of Transportation would have the authority to license short line operators while taking into account insurance and public safety requirements.
- The registrar may suspend or revoke a license. There is provision for appeal, and a hearing within 30 days, only involving the registrar and the applicant to a member of the Ontario Municipal Board.

- Provision is made for the provincial Minister of Transportation to enter into an agreement with the federal government with respect to the regulation of railway safety.

- A requirement that short line operators enter into agreements where appropriate for the operation of commuter or passenger rail services over their line(s).

These measures are designed to expedite and promote the establishment of short line railways in Ontario and will replace the review process described earlier.[110]

CONCLUSIONS

In the face of continued downsizing of the major railways, the transportation, economic development and employment potential of short line railways will be of continuing interest. In southwestern Ontario, for example, the Ministry of Agriculture, Food and Rural Affairs has expressed an interest in the retention of some branch lines used for the local transport of soybeans, wheat and corn and the export of agricultural commodities by rail to the United States.[111] The Ministry of Economic Development and Trade had earlier assumed a lead role in examining potential rail line abandonments in Simcoe County.

Interest and activity with respect to short line operations in Ontario may be increased due to several factors: their potential to save services, proposed federal legislative and regulatory changes, the future privatization of Canadian National, and the Ontario government's recent short line and labour law legislative proposals.Whatever the possible federal and Ontario regulatory or legislative changes, there still has to be the potential for adequate freight traffic on the line for it to be successfully converted to short line operation.

Various forms of short line railways may arise:

- Investors or businesses may establish the new operations.

- Employee operation or buyouts of short lines, as in Canadian National's internal short lines in Quebec and British Columbia may be an option in particular cases.

- The possibility of shipper or municipal financial involvement in short line operations is another alternative. The Arnprior-Nepean Railway in Ottawa-Carleton is one example of direct municipal and industrial shipper involvement to preserve a local rail line.

NOTES

[1.] Ross G. Snetsinger, "Tracks today, gone tomorrow," *Municipal World*, July 1994, p. 14.

[2.] John D. Thompson, "Shortlines, Big Money," *Materials Management and Distribution* 38:7 (July 1993): 21.

[3.] Canada, Statistics Canada, *Rail in Canada 1993*, Cat. no. 52-216 (Ottawa: Minister of Industry, Science and Technology, 1994), p. 134.

[4.] Ontario, Ministry of Transportation, Transportation Costing and Productivity Office, *Freightfacts: a Guide to Ontario's Freight Transportation Industry* (Ontario: The Office, 1992).

[5.] Statistics Canada, *Rail in Canada 1993*, p. 25.

[6.] Ibid., p. 45.

[7.] Railway Association of Canada, *Canadian Railways* [Map] (Montreal: Railway Association of Canada, 1991).

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[9.] Canadian National, *Annual Report 94* (CN, Montreal, 1995), p. 7.

[10.] Mark Hallman, "Tory win puts railways on the shortline track," *Financial Post*, 10 June 1995.

[11.] *Short Line Railways: An Attractive Transportation Option* (Montreal: Canadian National, Public Affairs and Advertising, n.d.).

[12.] CN, *Annual Report 94*, p. 15.

[13.] John D. Thompson, "Shortlines, Big Money," p. 22.

[14.] Canada, National Transportation Act Review Commission (Gilles Rivard, Chairman) *Competition in Transportation: Policy and Legislation in Review*, Volume 1 (Ottawa: The Commission, January 1993), pp. 97-98.

[15.] Extensive telephone interview with Jim Spiers, Vice-President, Railway Association of Canada in Montreal on 21 April 1994 at 879-8555.

[16.] Greg McDonnell, "RailTex's empire comes to Canada," *Trains* 53:3 (March 1993): 30; see also "Small is Beautiful," *Maclean's* (18 April 1994): 56.

[17] Telephone interview with Michael Mathews, Manager, Public Affairs, CN North America, in Toronto, 29 April 1994 at 217-2390.

[18] Gus Welty, "Railroads and the environment," *Railway Age* (February 1993): 27.

[19] Letter sent by John A. Cox, Communications & Public Affairs, CP Rail System, Toronto, dated 9 August 1994.

[20] These matters were discussed during a meeting on 28 October 1994 with Rob Bergevin, Director, Freight Transportation Policy Branch and Rod Taylor, Manager, Freight Modal Policy Office, Ontario Ministry of Transportation.

[21] Alan Freeman and Ann Gibbon, "Shortlines on track to produce profits," *Globe and Mail*, 23 November 1992.

[22] Barrie McKenna, "Workers dreading CN sale," *Globe and Mail*, 1 June 1995.

[23] RailTex Inc., *Introduction to RailTex*, p. 5.

[24] *Competition in Transportation: Policy and Legislation in Review*, Volume 1, p. 97.

[25] "The short-line rail baron," *Alberta Report*, 30 March 1992, p. 30.

[26] *Competition in Transportation: Policy and Legislation in Review*, Volume 1, p. 97.

[27] Extensive telephone interviews with Pauline Ryan, Policy Adviser, Labour-Management Policy Branch, Ministry of Labour on 28 April 1994 and 6 May 1994 at 314-5849. Current information was also obtained during several telephone interviews with Patti Hannigan, Ministry of Labour on 21 June 1995 at 325-4897.

[28] Ms. Hannigan, Ministry of Labour.

[29] The Railway Association of Canada, Correspondence to Clerk of the Standing Committee on Resources Development, 12 August 1992, p. 4.

[30] Canada, Department of Transport, Donald C. Fraleigh, *Final Report on Conditions of Work in the Railway Industry* ([Ottawa]: The Department, 25 April 1994), p. 13.

[31] Ibid. Another major concern expressed in this report is that the "Railways [have] far too many [separate] unions [17] to work with in the late 1990's and into the next century" (p. 20).

[32] Letter sent by John A. Cox, Communications & Public Affairs, CP Rail System, Toronto, dated 9 August 1994.

[33] Mark Hallman, "Tory win puts railways on the shortline track."

[34] John Thompson, "Labour laws derail short line plans," *Farm & Country*, 27 September 1994.

[35] Ibid.

[36] Snetsinger, "Tracks today, gone tomorrow," p. 15.

[37] Mark Hallman, "Tory win puts railways on the shortline track."

[38] Michael Mathews, CN North America, 14 June 1995 at 217-2390.

[39] Telephone interview with George Hucker, International Vice-President and National Legislative Representative, Brotherhood of Locomotive Engineers on 29 April 1994 in Ottawa at (613) 235-1828. Updated information was obtained during a telephone interview on June 27, 1995. This matter was also discussed with officials of the Ministry of Labour.

[40] Pauline Ryan, Ministry of Labour.

[41] Carl Clutchey, "Package seals Algoma deal," *Thunder Bay Chronicle*, 30 July 1994.

[42] Mr. Hucker, Brotherhood of Locomotive Engineers.

[43] *Railways Act*, R.S.O. 1950, c. 331, ss. 173-176.

[44] Telephone interviews with Barbara Gottesman former General Counsel, Ontario Municipal Board on 26 and 27 June 1995.

[45] Telephone interview with Rob Bergevin, Director, Freight Transportation Policy Branch, Downsview on 20 June 1995 at 235-4039.

[46] Information on this provincial approval process was obtained during a lengthy telephone interview with Gillian Burton, General Counsel, Ontario Municipal Board on 5 May 1994 at 326-6247 and updated during subsequent discussions with Barbara Gottesman.

[47] John Thompson, "Derailing an Idea or, the Long Way to Start a Short-Line Railway," *London Free Press*, 21 August 1993.

[48] Telephone interviews with Arleen Parker, General Manager, Goderich and Exeter Railway in Goderich on 3 May 1994 and 20 June 1995 at (519) 524-4024.

[49]. Ms Gottesman, Ontario Municipal Board.

[50]. Ontario Municipal Board, *Reasons for Decision in the Matter of Section 174 of the Railways Act, R.S.O. 1950, c. 331 and in the Matter of an application by Goderich-Exeter Railway Company Limited for an Order to approve the operation of a railway line between Goderich and Stratford, Ontario and between Clinton and Centralia, Ontario*, File M 910027, 13 January 1992, p. 3.

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[54]. *Competition in Transportation: Policy and Legislation in Review* Volume 1, pp. 98-99.

[55]. Alan Freeman, "Ottawa's transport proposals win few fans," *Globe and Mail*, 21 June 1995.

[56]. Clutchey, "Algoma deal."

[57]. Telephone interview with Al Bloomfield, Financial Officer, Northern Ontario Heritage Fund Corporation, Sault Ste. Marie, 14 June 1995 at (705) 945-6736. The status of this Fund was confirmed.

[58]. Detailed information on the Algoma Central situation was based upon a lengthy telephone interview with Tom Marcolini, Senior Transportation Economist, Economic Analysis and Transportation, Ministry of Northern Development and Mines, Sault Ste. Marie, 29 April 1994 and updated on 26 May 1995 at (705) 945-5836.

[59]. Ibid. The Algoma Central situation was also discussed in general terms with Rod Taylor, Manager, Freight Modal Policy Office, Ministry of Transportation, 25 April 1994 at 235-3636.

[60]. Telephone interview with George Hucker, International Vice-President and National Legislative Representative, Brotherhood of Locomotive Engineers in Ottawa, 3 May 1994 and 27 June 1995 at (613) 235-1828.

[61]. Mr. Marcolini, Ministry of Northern Development and Mines.

[62]. Mr. Hucker, Brotherhood of Locomotive Engineers, 27 June 1995.

[63] Mr. Hucker, Brotherhood of Locomotive Engineers; Tom Marcolini, Ministry of Northern Development and Mines, Sault Ste. Marie, 26 May 1995 at (705) 945-5836.

[64] Clutchey, "Algoma deal."

[65] Mr. Hucker, Brotherhood of Locomotive Engineers and Mr. Marcolini, Ministry of Northern Development and Mines.

[66] Telephone interviews with Arleen Parker, General Manager, Goderich and Exeter Railway in Goderich.

[67] "GEXR Unionized," *Rail and Transit*, December 1994, p. 15.

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